

COMMISSIONER: I'll take appearances.

**MR I. PATERSON:** If the commission pleases, IAN PATERSON, appearing for the Australian Municipal Administrative, Clerical and Services Union.

5 COMMISSIONER: Thanks, Mr Paterson.

**MR M. WATSON:** May it please the commission, MARK WATSON, I appear on behalf of the Tasmanian Chamber of Commerce and Industry and with me is **JENNY THOMAS**.

COMMISSIONER: Thanks, Mr Watson. Mr Paterson?

10 MR PATERSON: If the commission pleases, several preliminary matters. In line with the full bench decision in T6441 of 1996, these represent separate applications to vary these five awards. The applications were lodged in the manner that they were so as to ensure that a single commissioner would be able to hear them expeditiously  
15 instead of being five or more having to go to a full bench.

They are separate applications but I would seek your leave to combine them for the purposes of hearing, so that I can present some general observations and general comments on the approach that we've taken with the TCCI in reaching our consent positions on these matters and  
20 then I propose to proceed to look at each of the individual applications and take you through the way in which the draft orders will vary those specific awards but I reiterate, they are in conformity with the full bench decision being separate applications to vary each award.

COMMISSIONER: Yes. I don't see anything wrong with that. What's  
25 your reaction, Mr Watson?

MR WATSON: No, that's fine with me, commissioner. If I can just amend one of my appearances too, please. I also appear specifically for the Totalizator Agency Board in relation to that particular award.

COMMISSIONER: What's the requirement for that?

30 MR WATSON: Because the resondancy to the Totalizator Agency Award - effectively, the award specifically binds the Totalizator Agency Board as the employer -

COMMISSIONER: You're appearing on their behalf?

MR WATSON: Yes, in that particular matter as well as my  
35 appearance for the TCCI.

COMMISSIONER: Yes, I see. Thanks, Mr Watson. I accept all that and I propose therefore to hear them all at once. Mr Paterson?

MR PATERSON: If the commission pleases, I will proceed. I believe that these applications to vary these awards do incorporate the model clauses of the full bench decision, modified as appropriate for each of the respective awards and that they give effect within each of those awards to the intent and the direction contained within the full bench decision.

The draft orders, in addition to those matters specifically addressed by the decision and the model clause, also address the question of the entitlements of part-time employees in two different respects. Those part-time employees who have entitlements to leave - there is an expression which gives effect to their entitlements specifically and in relation to part-time employees who receive a loading in lieu of leave entitlements, their situation is dealt with with respect to the unpaid carer's leave provisions.

There is one matter that the parties haven't been able to agree on. That is, the question of the entitlements of casual employees. That's not agreed and therefore these consent orders do not go to that issue. The union believes that in certain circumstances there are casual employees who are engaged for extended periods who should have an entitlement to unpaid leave. We are also aware that it's problematic and verging on a nonsense to have an entitlement to unpaid leave for some casuals who are genuinely casuals engaged as required on a short-term basis who are hourly. The reality could be they are just given leave and then told not to come back after their leave and there's no difference then between being given and not being given the leave.

However, we are aware of a number of awards in which the provisions allow for casuals to be employed over extended periods and we propose to have further discussions with the TCCI in respect of those specific awards and it may be that the general question requires some higher level of negotiation between the parties.

The union's position on the question of casuals is that we don't intend to go further into the issue today. It's not a subject of the consent orders, other than to state that further discussions will take place and subsequent applications may be made dependent on the outcome of those discussions.

One other matter I wish to place on the record in terms of the general provisions of all five applications goes to the facilitative provisions in the applications, particularly in respect of annual leave and time off in lieu of overtime.

The parties are generally agreed that where the award already provides access to leave and time off in lieu of overtime payment, that is consistent with the model clause and there is no variation to the award necessary. I will turn to those specifically when I get to the particular awards, however, I just say that the parties in our discussions have agreed that if disputes arise, then our intent would be to see that the

be to see that the relevant award provisions are applied to give effect to those facilitative provisions in terms of access to single days of annual leave in particular and the use of time off in lieu in accordance with the full bench decision.

5 Clearly, if issues arise where this is not happening or awards are actually seen to be constraining those, then in accordance with what we've said here today in the applications and the full bench decisions, then subsequent applications to vary would be made, but at this stage, particularly, in relation to those two areas of provisions, we believe that  
10 these draft orders are sufficient to give effect to the full bench decision.

If the commission pleases, I'll turn sequentially to the five awards and present to you draft orders. I will do them alphabetically rather than in T number order.

15 The first draft order is in respect to the **Barristers & Solicitors Award**. In a sense, I guess this will be a model for my presentation, that the matters that I raise in this particular one that are raised again and again in the other applications. I don't propose to repeat myself on those.

20 COMMISSIONER: No. Just as a formality, you're seeking to amend your application to replace the original draft order with this one?

MR PATERSON: I am indeed. If the commission pleases.

COMMISSIONER: Any objection, Mr Watson?

MR WATSON: No, commissioner.

25 COMMISSIONER: Right. You're not putting forward anything else, are you, in this particular award, Mr Paterson?

MR PATERSON: No, I'm not. The other issue that was mentioned to me this morning is one that's not dealt with in the order, I'd seek your advice as to whether any amendment to the application is needed or  
30 whether it's a procedural or in-house sort of matter. These applications don't go to the question of varying the arrangements clause to reflect these provisions. That would be a consequent amendment on the making of these orders.

35 COMMISSIONER: It's more a job for the commission, as far as I'm concerned, Mr Paterson.

MR PATERSON: That's fine. To turn to the particular award. The order is a consent order. The award variation seeks an operative date of the date of hearing. It would insert a new clause which, for the purposes of the order, is labelled XX. The general drafting of these is  
40 that where a paragraph is struck through, as in the bottom paragraph

on the draft order, that was a paragraph that was in the original application that has been now deleted.

5 To go to page 2, where paragraph or paragraphs are underlined, they are the new additions to the order that are inserted by consent as a result of our discussions. On the top of page 2, the first two paragraphs clarify part-time employees entitlements in terms of a week rather than  
10 five days, on the basis that a five day provision can be confusing and it provides that where a part-time employee's hours are not constant, their entitlement shall be based on the average number of weekly hours worked by the employee during the 12-month period immediately preceding the commencement of the relevant period of carer's leave or the actual period of service, if less than 12 months.

15 That last phrase is included to make it clear that there's not a 12-month qualifying period and that if someone has worked for less than 12 months, there's similar entitlement that can be worked out on that basis.

The balance of Part A, in effect, reflects the model clause of the full bench decision and turning to page 3, Unpaid Carer's Leave, the general provision in (b)(i) is there to provide that an employee may elect  
20 to take unpaid leave.

In respect to this award, there is no provision in the award for a part-time employee to take a loading in lieu of entitlements. Part-time employees under the Barristers and Solicitors Award have an entitlement unfettered or without qualification to pro rata leave  
25 entitlements. For that reason, the question of an employee in receipt of a loading in lieu of paid entitlements doesn't arise.

In clause (c) - Grievance Procedure, the variations there reflect the discussions between the parties and an agreement which essentially turned the dealing with disputes from, 'shall be referred' to 'may refer'.  
30 It just avoids the imperative and provides that it may be done in that way.

To page 4, Cause 10 - Annual Leave. This is one of the clauses where the parties are agreed, that the award provisions as they stand provide for leave to be taken in a manner which is consistent with the award.  
35 The award provides that annual leave may be given and taken in two periods, the lesser of which shall not be less than five days, but it then qualifies that to say: That provided by agreement between the employer and the employee, annual leave may be taken in any combination. The parties are agreed that that facilitates within the current award, the provisions that were within the full bench decision.  
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The subsequent variations to the award on pages 5 and 6 are entirely consistent with the full bench decision and in effect make no change to the model clause provisions.

And finally, on page 7, Overtime - again, the parties were agreed that for the greater part, the provisions of the award already allow time off in lieu and the only provision within the model clause that goes beyond what's in the award is that which was previously numbered (iii) which  
5 would now go in as a subparagraph (d) of the Overtime clause.

That, in summary, is the effect of this order on the Barristers and Solicitors Award.

COMMISSIONER: Yes. Thanks, Mr Paterson. Perhaps we'd better hear from Mr Watson on this particular award.

10 MR PATERSON: Before we do, I don't think we numbered the - oh, we don't need to because it's an amended order.

COMMISSIONER: No, there's only one and it is replacing what's in the application.

MR PATERSON: Right. That's fine.

15 COMMISSIONER: That's how I see it. What about an operative date there, Mr Paterson?

MR PATERSON: The operative date, as indicated on the cover sheet, would be the date of hearing and that is the date sought - today's date.

20 COMMISSIONER: Yes, Is that the first full pay period or the day itself?

MR PATERSON: In conformity with general - my understanding of general provisions, it would be the first full pay period commencing on or after today's date.

COMMISSIONER: All right. Thanks, Mr Paterson. Mr Watson?

25 MR WATSON: Thank you, commissioner. In relation to this particular award - first of all, I intend to make submissions to you in relation to all five matters generally, in relation to the wage fixing principles, the full bench decision, the public interest, et cetera. In relation to this particular award, I can indicate that we did have discussions with Mr  
30 Paterson yesterday and we have reached a consent position and this order, without having read through it all this morning, subject to errors and omissions, would in fact reflect the consent position of the parties.

COMMISSIONER: Thanks, Mr Watson. Mr Paterson?

35 MR PATERSON: Thank you, Mr Commissioner. If I could turn now to the **Clerical and Administrative Employees (Private Sector) Award**.

COMMISSIONER: Yes. Well, we'll take it that you're handing up one for each award and each one will be an amendment. So, you're applying to amend the original application?

5 MR PATERSON: I seek leave in each case to amend the original application consistent with the draft order as presented today.

COMMISSIONER: Yes. You agree with that, Mr Watson?

MR WATSON: Yes, commissioner.

COMMISSIONER: Thank you.

10 MR PATERSON: The matters that I dealt with in the previous application, by and large apply to this application. The operative date sought is the first full pay period on or after today's hearing. It amends the award to insert a carer's leave provision.

15 On page 2 of this application, the question of part-time employees not in receipt of a loading is dealt with under the - that's the same, sorry - to go to page 3, the unpaid carer's leave. In this award it is consistent with the provisions of the award for a part-time employee to be receiving a loading in lieu of entitlements. Therefore, subclause (b)(ii) is inserted to clarify the entitlement to unpaid carer's leave for such part-time employees.

20 The second paragraph is the same formula used in respect of part-time employees in section A(1). Those part-time employees in section A(1) being those that have a leave entitlement. It's just that the formula for calculating the average weekly hours is the same in both Parts A and B.

25 The next minor variation in terms of this draft order as against the original application is on page 6, the insertion into Clause 18 - Hours of Work, subclause (h), the word 'leisure', is added to ensure conformity with the language used in the award as it currently is - referred to as rostered leisure days off and over the page, the RDOs become RLDOS.

The overtime clause variation is exactly the same manner as I alluded to in the Barristers and Solicitors Award. The facility provisions are in the existing award and that Part 3 is added to extend them in accordance with the provisions of the model clause.

35 COMMISSIONER: Thanks, Mr Paterson. What do you say to that, Mr Watson?

MR WATSON: I think opposition in relation to this one would be exactly the same as the previous matter, commissioner.

COMMISSIONER: Thanks, Mr Watson. Next one, Mr Paterson?

MR PATERSON: Turning to the **Estate Agents Award**, Mr Commissioner.

5 My submissions in respect of this award will be very brief. They are, in effect, the same variations to this order, against this application, as I alluded to in the Clerical and Administrative Employees (Private Sector) Award. The operative date would be the first full pay period on or after today.

The other provisions of this application are provisions that I have already alluded to in respect of my submissions on other awards.

10 COMMISSIONER: Thanks, Mr Paterson. Mr Watson?

MR WATSON: Ditto, commissioner.

MR PATERSON: It's better than what he says when he doesn't like it.

COMMISSIONER: Well, on occasions when we've got agreement like this, we should all enjoy it, appreciate it.

15 MR PATERSON: This draft order is pursuant to the application to vary the **Public Accountants Award** and I will just quickly examine the provisions here. The first seven pages of this order are in fact identical to the variations made in the two previous applications. I will just turn very briefly to page 8.

20 This award actually does not have subparagraphs within the overtime clause. It just has unnumbered paragraphs, so this variation would just insert a new paragraph in Cause 19 - Overtime, an unnumbered, un-initialled clause. To all other purposes, the draft order is consistent with my submissions already made today.

25 COMMISSIONER: Yes. Is this the last one?

MR PATERSON: This is the last of the four that we sought to have joined. The remaining matter is that of the Totalizator Agency Award.

COMMISSIONER: I see. Did you tell me, or are you going to tell me, Mr Paterson, about the public interest and the guidelines, are you?

30 MR PATERSON: It would be my submission, commissioner, that this is giving effect to the public interest and guideline submissions that were made in the matter of T6441 of 1996 and that the only issue, in my view, to be considered here is that it is in the public interest to give effect to the full bench decision by making applications and  
35 subsequently varying particular awards and that other than that, there is no issue that presents that says that these applications and draft orders are in any way lodged with the public interest.

COMMISSIONER: Yes, and that applies to all these?

MR PATERSON: It applies to all these and similarly, to the final matter that we have before us today that we will get to.

COMMISSIONER: Yes. Thanks, Mr Paterson. Mr Watson?

5 MR WATSON: Yes. Our position would be the same as the other matters, commissioner.

COMMISSIONER: Thanks, Mr Watson.

**HEARING CONCLUDED**